

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1905.

No. 1504.

No. 8, SPECIAL CALENDAR.

THE UNITED STATES *EX RELATIONE* OF JUAN
RODRIGUEZ, APPELLANT,

vs.

JOHN M. BOWYER, COMMANDER, U. S. N.; E. A. ANDERSON,
LT. COMMANDER, U. S. N.; WALTER M. FALCONER,
LIEUTENANT, U. S. N., CONSTITUTING THE BOARD OF
LABOR EMPLOYMENT AT U. S. NAVY YARD, WASH-
INGTON, D. C.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

THE UNITED STATES *ex Relatione* of JUAN RODRIGUEZ, }
Appellant, } No. 1504.
vs. }
JOHN M. BOWYER, Commander, U. S. N., ET AL. }

a Supreme Court of the District of Columbia.

THE UNITED STATES *ex Relatione* of JUAN }
Rodriguez, Relator, }
vs. }
JOHN M. BOWYER, Commander, U. S. N.; }
E. A. Anderson, Lt. Commander, U. S. N.; } No. 46916. At Law.
Walter M. Falconer, Lieutenant, U. S. N., }
Constituting the Board of Labor Employ- }
ment at U. S. Navy Yard, Washington, }
D. C., Respondents. }

UNITED STATES OF AMERICA, } ss :
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit :—

1 *Petition for a Mandamus.*

Filed April 29, 1904.

In the Supreme Court of the District of Columbia.

THE UNITED STATES *ex Relatione* of JUAN }
Rodriguez, Relator, }
vs. }
JOHN M. BOWYER, Commander, U. S. N.; }
E. A. Anderson, Lt. Commander, U. S. N.; } At Law. No. 46916.
Walter M. Falconer, Lieutenant, U. S. N., }
Constituting the Board of Labor Employ- }
ment at U. S. Navy Yard, Washington, }
D. C., Defendants. }

To the Honorable Harry M. Clabaugh, chief justice of the supreme court of the District of Columbia :

The petition of Juan Rodriguez respectfully represents :

1. That he is a citizen of Porto Rico, and presents this petition in

his own right under the laws of the United States and in enforcement of the protection and rights guaranteed him by these laws in general, and by those bearing on the United States citizenship in particular.

2. That he sues the defendants in their official capacity, jointly and separately, they constituting the board of labor employment at the United States navy yard, in Washington, D. C.

3. That on or about the 16th day of February, 1904, your petitioner desirous of obtaining employment at the said navy yard, as a laborer, sent a communication to the said board of labor employment, which was an application for admission to examination for such employment, and for registration with the said board, under rule 2 of navy yard order No. 26, dated July 7, 1902, which provides that "no person can be given employment in a United States navy yard as a mechanic or laborer until he registers with the board of labor employment."

4. That on or about the 26th day of February, 1904, the
2 aforesaid board of employment, through its recorder, replied to your petitioner that he could not be registered for employment as prayed, on the alleged ground that he was not a citizen of the United States; that a copy of the said reply is hereto appended and is hereby made a part of the present petition as exhibit.

5. That this ruling of the board of employment deprives your petitioner of his just rights under the laws of the United States, and, denying him his national citizenship would, if maintained, deprive him of the most precious and sacred prerogative guaranteed him by these laws; and that his only remedy lies in a petition to your honorable court, that a writ of mandamus issue, directed to the said defendants jointly and separately, as the board of labor employment, at the United States navy yard, in Washington, D. C. commanding them to appear and show cause why an order of this court should not issue against them, commanding them to register your petitioner for employment at the said navy yard under the laws as prayed, and to accord him in pursuance thereof and in consequence thereof all rights and privileges granted under the laws to other citizens of the United States.

And your petitioner will ever pray, etc.

JUAN RODRIGUEZ, *Relator*.

DISTRICT OF COLUMBIA, ss:

Personally appeared before me Juan Rodriguez, well known to me to be the relator who signed the foregoing petition, who on oath declared to me this day that he knew all the contents thereof, and that all facts stated therein of his own knowledge are true, while those stated therein on information and belief he believes to be true.

[SEAL.]

M. T. GRAVES,
Notary Public, D. C.

3

EXHIBIT.

(Copy.)

Filed May 2, 1904.

Board of labor employment, United States navy yard.

WASHINGTON, D. C., *Febr'y 26th*, 1904.

SIR: Referring to your application of February 16th, 1904, for employment in this yard as a laborer, I have to inform you that the Navy Department has ruled that you cannot be permitted to register for employment, as you are not a citizen of the United States.

Very respectfully,

(Signed)

R. G. DAVENPORT,

Commander, U. S. N., Recorder Board of Labor Employment.

Juan Rodriguez, 515 North Capitol Str., Washington, D. C.

Memorandum.

May 3, 1904.—Rule to show cause, returnable May 13th, 1904, issued.

[Endorsed:] Law. No. 46916. U. S. *ex rel.* Juan Rodriguez, petitioner *v.* John M. Boyyer *et al.* Petition for writ of mandamus. Federico Degetau, Jean F. P. des Garenes petitioner's attorneys. Filed Ap'l 29, 1904.

4

Answer of Defendants.

Filed May 13, 1904.

In the Supreme Court of the District of Columbia.

THE UNITED STATES <i>ex Rel.</i> JUAN RODRIGUEZ	}	At Law. No. 46916.
vs.		
JOHN M. BOWYER ET AL.		

Answer of the defendants to the petition for writ of mandamus and to the rule to show cause.

1. These defendants have no knowledge whether the petitioner is a citizen of Porto Rico.

2. These defendants admit that they constitute the board of labor employment at the United States navy yard, at the city of Washington, District of Columbia.

3 and 4. These defendants admit that on or about the 16th day of February, 1904, the petitioner applied to the defendants, constituting such board of labor employment, for admission and examination for employment in the Washington navy yard and for registration with the said board, and that on or about the 26th day of February, 1904, the defendants, acting as such board, through the recorder thereof, notified the petitioner that he could not be registered for employment with the said board, on the ground that he was not a citizen of the United States; and that the exhibit attached to said petition is a copy of the said notification to the petitioner.

Further answering said paragraphs these defendants say that they, as such board of labor employment, upon the receipt of the said application of the petitioner for registration, communicated with the Navy Department upon the subject, and by letter of the Assistant Secretary of the Navy, dated February 24th, 1904, these defendants were informed that the petitioner was not eligible for such registration. A transcript of the records of the said board of labor employment in the case of the petitioner is hereto attached, marked Exhibit A and prayed to be taken as part hereof.

5. These defendants deny that the petitioner or any other person is entitled, as a matter of right, to be registered with the said board of labor employment, or that such registration can be enforced by the writ of mandamus.

6. Further answering said petition, these defendants say that even if the petitioner is a citizen of Porto Rico, they are advised and believe, and therefore aver, that he is not a citizen of the United States, and is not therefore entitled to be registered with said board of labor employment.

7. And these defendants say that, as the board of labor employment at the Washington navy yard, it is their duty to consider the applications of all persons for registration with the said board, and to determine whether or not such applicants are persons proper to be so registered, and that said duty is one involving the exercise of judgment and discretion on their part.

Defendants further say that when the petitioner applied for registration with them as set forth in his petition, he did not furnish evidence satisfactory to these defendants that he is a citizen of the United States, or that he had served in the Army, Navy, or Marine Corps, as required by paragraph ten of navy yard order No. 23, as revised November 16, 1895, which provides:

"No applicant shall be registered unless he furnishes satisfactory evidence that he is a citizen of the United States, or has served in the Army, Navy, or Marine Corps and that his discharge or discharges therefrom were not dishonorable or for bad conduct;"

and because of his failure to furnish evidence satisfactory to them that he is a citizen of the United States, these defendants declined to register the petitioner. And defendants say that their action in

said behalf is not subject to be reviewed, reversed, set aside or controlled by a court of law, nor can their action in that behalf be commanded, directed or controlled by the writ of mandamus as the petitioner in his said petition has prayed.

JOHN M. BOWYER,
*Commander, U. S. Navy, Senior Member of Board of Labor
 Employment, Navy Yard, Washington, D. C.*

MORGAN H. BEACH, *U. S. Att'y, D. C.,*
 JESSE C. ADKINS, *Ass't U. S. Att'y, D. C.,*
Attorneys for Defendants.

[Endorsed:] U. S. *ex rel.* Rodriguez *v.* John M. Bowyer *et al.* Office copy of answer. Filed May 13, 1904.

6 DISTRICT OF COLUMBIA, ss:

I, John M. Bowyer, on oath, say that I am one of the defendants in the above entitled cause, and have signed the foregoing answer on behalf of myself and my co-defendants; that I have read the said answer and know the contents thereof: that the facts therein stated of our own knowledge are true, and that those stated upon information and belief I believe to be true.

JOHN M. BOWYER.

Subscribed and sworn to before me, this 12th day of May, A. D. 1904.

[SEAL.]

ALBERT HARPER,
Notary Public, D. C.

7 EXHIBIT A.

(Copy.)

Transcript of Records in the Case of Juan Rodriguez, Applicant for Employment in the Navy Yard, Washington, D. C.

Extract from navy yard order No. 23, revised Nov. 16, 1895 (issued by the Navy Department).

"10. No applicant shall be registered unless he furnishes satisfactory evidence that he is a citizen of the United States, or has served in the Army, Navy, or Marine Corps, and that his discharge or discharges therefrom were not dishonorable or for bad conduct.

Copy.

U. S. NAVY YARD, WASHINGTON, D. C., Feb. 17, 1904.

SIR: 1. One Juan Rodriguez, a native of Porto Rico, has applied to the board of labor employment for registration for employment in

this navy yard. Under the regulations none but citizens of the United States (natives or naturalized), or those who have served in the Army, Navy or Marine Corps of the United States, are permitted to register. A decision is requested in this case, namely, whether a native of Porto Rico, not naturalized, can be accepted or considered as a citizen of the United States.

Very respectfully,
(Signed)

R. G. DAVENPORT,
*Commander, U. S. Navy, Recorder
Board of Labor Employment.*

The commandant.

Copy.

1220 Cs-B.

NAVY DEPARTMENT,
WASHINGTON, *February 24, 1904.*

SIR: Referring to the letter of the recorder of the board of labor employment at the yard under your command, requesting a decision as to whether Juan Rodriguez, a native of Porto Rico, not naturalized, may be permitted to register for employment at the yard, you are advised that as Mr. Rodriguez is not a citizen of the United States he is not eligible for registration.

Very respectfully,
(Signed)

CHAS. H. DARLING,
Assistant Secretary.

P.

Commandant, navy yard, Washington, D. C.

8 U. S. NAVY YARD, WASHINGTON, D. C., *Feb. 25, 1904.*

Respectfully referred to the labor board for its information.

(Signed)

FRANCIS J. HIGGINSON,
Rear Admiral, U. S. N., Commandant.

Copy.

Board of labor employment, U. S. navy yard.

WASHINGTON, D. C., *February 26, 1904.*

SIR: Referring to your application of February 16, 1904, for employment in this navy yard as a laborer, I have to inform you that the Navy Department has ruled that you cannot be permitted to register for employment as you are not a citizen of the United States.

Very respectfully,
(Signed)

R. G. DAVENPORT,
*Commander, U. S. N., Recorder Board
Labor Employment.*

Mr. Juan Rodriguez, No. 515 N. Capitol St., city.

I certify the above is a true transcript of the records of the board of labor employment, navy yard, Washington, D. C., in the case of Juan Rodriguez.

R. G. DAVENPORT,
Commander, U. S. N., Recorder Board
of Labor Employment.

9

Petitioner's Demurrer to Answer.

Filed May 19, 1904.

In the Supreme Court of the District of Columbia.

UNITED STATES <i>ex Rel.</i> JUAN RODRIGUEZ	}	No. 46916. At Law.
<i>vs.</i>		
JOHN M. BOWYER ET AL.		

Demurrer.

The petitioner says that the respondents' return is bad in substance.

FEDERICO DEGETAU,
JEAN F. P. DES GARENNES,
Attorneys for Petitioner.

NOTE.—The following points of law will be argued at the hearing of this demurrer, together with such further questions as may be raised by the attorneys for respondents in *his* argument:

I. That the return of the respondents does not justify their action in refusing to register the petitioner for employment at the United States navy yard, Washington, D. C.

II. That the petitioner is a citizen of the United States.

III. That the petitioner is entitled, on the face of the record to be registered for employment at the United States navy yard in Washington, D. C.

IV. That the respondents as the board of labor employment at the United States navy yard in Washington, D. C., have no discretion or judgment to refuse to register under navy yard order No. 23 an applicant who is a citizen of the United States, and whom
10 they do not find otherwise disqualified under section- 10, 11 or 12 of the said order No. 23.

V. That the manner and form of the refusal conveyed by the respondents to the petitioner, a copy of which is appended to the petition as an exhibit, shows the said respondents to have overstepped the bounds of the discretion conferred upon them by navy yard order No. 23, and to have refused to perform a duty imposed on them ministerially by the said order.

VI. That the discretion conferred on the respondents by navy yard order No. 23 is not general, but is restricted to certain definite

questions and to the verifying of certain facts expressly indicated in the said document, and cannot authorize them to refuse to recognize the United States citizenship of the petitioner.

VII. That the petitioner in giving evidence of Porto Rican citizenship gave full evidence of United States citizenship.

VIII. That the right involved is one which will justify this honorable court in granting the writ of mandamus prayed for by the petitioner in the above entitled cause.

11

Stipulation of Counsel.

Filed June 9, 1904.

In the Supreme Court of the District of Columbia.

UNITED STATES <i>ex Rel.</i> JUAN RODRIGUEZ	}	At Law. No. 46916.
<i>vs.</i>		
JOHN M. BOWYER ET AL.		

It is hereby stipulated and agreed by and between the counsel for the parties to the above entitled cause as follows:

That the petitioner was born in Porto Rico on the 8th day of December, 1884, and left Porto Rico after the ratification of the treaty of Paris and the passage of the Foraker act, and came to the District of Columbia, and that he is a citizen of Porto Rico.

The defendants waive any objection to the failure of petitioner to allege in his petition a full compliance with the conditions imposed upon applicants for registration by navy yard orders No. 23, as revised Nov. 16, 1895, and No. 26 as revised July 7, 1902, and admit a compliance by petitioner with the requirements of said orders.

FEDERICO DEGETAU,
 JEAN F. P. DES GARENNES,
Attorney for Relator.
 MORGAN H. BEACH, U. S. Att'y.

12

Order Overruling Demurrer.

In the Supreme Court of the District of Columbia.

UNITED STATES <i>ex Rel.</i> JUAN RODRIGUEZ	}	At Law. No. 46916.
<i>vs.</i>		
JOHN M. BOWYER ET AL.		

This cause coming on to be heard upon the petition, the rule to show cause, the answer, the demurrer thereto, and the stipulation of counsel, and being argued by counsel and considered by the court, it is, by the court, and the authority thereof, this 12th day of De-

ember, A. D. 1904, ordered and adjudged that the said demurrer be and it is hereby overruled, that the rule to show cause be and it is hereby discharged, and that the petition be and it is hereby dismissed.

HARRY M. CLABAUGH,
Chief Justice.

From the foregoing order the petitioner in open court notes an appeal to the Court of Appeals of the District of Columbia, which is hereby allowed, and penalty of the bond for costs is fixed in the sum of fifty dollars.

HARRY M. CLABAUGH,
Chief Justice.

13 *Directions to Clerk for Preparation of Record.*

Filed December 28, 1904.

In the Supreme Court of the District of Columbia.

UNITED STATES <i>ex Rel.</i> JUAN RODRIGUEZ	}	No. 46916. At Law.
<i>vs.</i>		
JOHN M. BOWYER ET AL.		

The clerk will please prepare the transcript for the Court of Appeals in this case, and will include therein the following:

1. Petition and exhibits.
2. Rule to show cause.
3. Answer of the defendants and exhibits.
4. Demurrer to the answer.
5. Stipulation of counsel.
6. Order dismissing petition and allowing appeal.

FREDERICO DEGETAU,
JEAN F. P. DES GARENNES,
Attorneys for Petitioner.

Memorandum.

December 30, 1904.—Appeal bond filed.

14

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 13, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 46,916, at law, wherein The United States, *ex relatione* of Juan Rodriguez, is relator, and John M. Bowyer, commander, U. S. N., *et al.*, constituting the board of labor employment, at U. S. navy yard, Washington, D. C., are respondents, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe
 Seal Supreme Court my name and affix the seal of said court, at
 of the District of the city of Washington, in said District, this
 Columbia. 30th day of December, A. D. 1904.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1504. The United States *ex relatione* of Juan Rodriguez, appellant, vs. John M. Bowyer, commander, U. S. N., *et al.* Court of Appeals, District of Columbia. Filed Dec. 31, 1904. Henry W. Hodges, clerk.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1905.

THE UNITED STATES EX RELATIONE JUAN
Rodriguez, appellant,

v.

JOHN M. BOWYER, COMMANDER, U. S.
Navy; E. A. Anderson, lieutenant-
commander, U. S. Navy; Walter M.
Falconer, lieutenant, U. S. Navy, con-
stituting the Board of Labor Employ-
ment at the Washington navy yard.

No. 1504.

No. 8

Special
Calendar.

BRIEF FOR APPELLEES.

STATEMENT.

This is an appeal from an order of the Supreme Court of the District of Columbia dismissing the application of the appellant for a writ of mandamus to compel the appellees, constituting the Board of Labor Employment at the Washington navy yard, to register him for employment.

The appellant was born in Porto Rico on December 8, 1884, where he lived until he came to the District of Columbia, after the ratification of the treaty of Paris and the passage of the Foraker Act. He is a citizen of Porto Rico (stipulation, Rec., 8), and claims thereby to be a citizen of the United States.

The appellees are sued in their official capacity. Their duties will be discussed hereafter. It is sufficient here to say that by the orders of the Secretary of the Navy to them is committed the employment of laborers and mechanics at the Washington navy yard and the registration of all applicants for employment, within certain limitations—among others, that no person who is not a citizen of the United States or who has not served in the Army or Navy shall be registered.

The appellant alleges in his petition that on February 16, 1904, he made application to the appellees for admission to examination for employment and for registration at the Washington navy yard as a laborer, and that on February 26, 1904, he was notified by the appellees that he could not be registered, "on the alleged ground that he was not a citizen of the United States," a copy of such notification being attached to the petition. (Rec., 1-3.)

A rule to show cause having been issued, the appellees answered, averring that they had refused to register the petitioner for employment because he did not at the time of his application furnish evidence satisfactory to them that he was a citizen of the United States, and that their action in that behalf was not subject to review by the courts; that appellant's application was submitted by them to the Navy Department for instructions, and they were advised by the Assistant Secretary of the Navy, on February 24, 1904, that appellant was not a citizen of the United States, and therefore not eligible for registration; that

the right of registration with them was not a right of person or of property which could be enforced by mandamus; and, finally, that petitioner was not a citizen of the United States. Attached to the answer is a copy of the official records of the board in appellant's case. (Rec., 3-6.)

To this answer the petitioner demurred. (Rec., 7).

It will be noticed, in considering the navy-yard orders covering the matter of employment, that the petition is faulty in failing to allege a compliance by appellant with the requirements of those orders; but this defect is cured by the stipulation of counsel that as a matter of fact the appellant did comply with all such requirements. (Rec., 8.)

The case being heard upon these pleadings, the court below overruled the demurrer and dismissed the petition, and from that action this appeal is prosecuted. (Rec., 8, 9.)

ARGUMENT.

Appellant's brief has not been filed; but as the only assignable error is the order of the trial court dismissing the petition, and as that order does not state the grounds upon which the dismissal was based, we will discuss in this brief the two issues raised by the pleadings and argued below, namely:

1. Mandamus will not lie to control the action of the Board of Labor Employment in the matter of registration.
2. The appellant is not a citizen of the United States, as required by the regulations.

MANDAMUS WILL NOT LIE.**1. THE ACTION OF APPELLEES INVOLVED THE EXERCISE
OF JUDGMENT AND DISCRETION.**

On November 16, 1895, the Secretary of the Navy promulgated "Navy Yard Order No. 23," containing regulations covering the employment of labor at the navy yards of the United States.

That order provides:

1. The employment of laborers and mechanics at each of the navy yards and stations shall be committed to a board consisting of three commissioned officers on duty at the station, to be called the "Board of Labor Employment."

2. The board shall be responsible for the proper, effective, and impartial enforcement of these regulations.

8. All applicants shall be registered in the order of their application, and no person shall be employed * * * without registering.

10. No applicant shall be registered unless he furnishes satisfactory evidence that he is a citizen of the United States, or has served in the Army, etc.

11. Before entering the name of an applicant on the register such further inquiry may be made in regard to his character and capacity as the board may deem practicable or expedient; and any applicant who has been convicted of crime, misdemeanor, or vagrancy may, in the discretion of the board, be refused registration.

12. In case an applicant is found, in the opinion of the board, unfit or in any way disqualified to perform the service which he seeks, his name shall not be entered on the register, and the reason therefor shall be indorsed on his application, etc.

Navy Yard Order No. 26, revised, promulgated by the Secretary of the Navy July 7, 1902, covers the same subject, and is entitled "Instructions to applicants for employment as laborers and mechanics." It provides:

2. No person can be given employment in a United States navy yard as a mechanic or laborer until he registers with the Board of Labor Employment.

Paragraphs 6, 7, and 8 are substantially the same as paragraphs 10, 11, and 12 of Order No. 23.

The appellees constitute the Board of Labor Employment at the Washington navy yard, and as such are "responsible for the proper, effective, and impartial enforcement" of the regulations.

In the execution of these regulations it was their duty to make such inquiry as they deemed practicable or expedient as to the character and capacity of the petitioner, and to determine whether he was disqualified by reason of conviction of crime, misdemeanor, or vagrancy or otherwise, and finally to determine whether or not he was a citizen of the United States.

The appellees have done all this, and have refused to register the appellant on the ground that he has

not furnished evidence satisfactory to them that he is a citizen of the United States.

It requires no citation of authorities to show that the determination of citizenship is a matter which involves the exercise of judgment, and the duty of determining that fact having by the regulations been imposed upon the appellees, their decision, whether right or wrong, can not be reviewed by the courts.

U. S. ex rel. Riverside Oil Co. v. Hitchcock, 190
U. S., 324.

2. THE REFUSAL OF APPELLEES TO REGISTER APPELLANT BEING BY DIRECTION OF THEIR SUPERIOR OFFICER, THE ASSISTANT SECRETARY OF THE NAVY, THE LATTER SHOULD HAVE BEEN MADE A PARTY DEFENDANT.

From the answer and the exhibit attached thereto it appears that on the application of appellant for employment the appellees referred the matter to the Navy Department for instructions, and that on February 24, 1904, the Assistant Secretary of the Navy decided that the petitioner was not a citizen of the United States and was not therefore eligible for registration. It was upon this instruction that the appellees refused to register the appellant.

The matter having been properly submitted to the Assistant Secretary of the Navy for decision, and he having directed the appellees not to register the applicant, they have now no authority, and the courts will not command them, to take any other action. The writ of mandamus, if granted, should be directed to

their superior officer, whose order they are now obeying.

Evans v. U. S. ex rel. Phillips, 19 App. Cas. D. C., 202, 204.

Warner Valley Stock Co. v. Smith, 165 U. S., 28, 34.

3. THE RIGHT OF REGISTRATION WITH THE BOARD OF LABOR EMPLOYMENT IS NOT A RIGHT OF PERSON OR OF PROPERTY WHICH CAN BE ENFORCED BY MANDAMUS.

Paragraph 31 of order No. 23 and paragraph 27 of order No. 26 provide that applicants shall be registered for employment in three classes, the first class including those who have served in the Navy or Army, the second including those who have had experience in the same or allied work in a navy yard or in the Navy, and the third class including all others.

Paragraph 37 of order No. 23 provides that when the services of laborers or mechanics are required in any department of a navy yard, the head of that department shall make requisition upon the board for the number of persons necessary, and the board shall certify to the department such number of names in the order in which they are registered, no certification being made from class 3, however, until the names on classes 1 and 2 are exhausted.

Under paragraphs 42 and 43, order No. 23, the head of the department is to test the certified applicants to ascertain if they are suitable for the work and their grading, and he has the right to reject them altogether if found unsuitable.

Under paragraph 29, order No. 23, a person remains on the eligible list only for a year, and if he be not certified within that time he is dropped from the register.

The right, then, which the appellant claims is the right to have his name placed and kept for a year on the register of applicants for employment at the Washington navy yard in class three, with the possibility that during that year he may be certified for employment to one of the departments of the yard, and with the further possibility, if so certified, that he may be employed therein.

It is plain, we think, that there is here involved no substantial right which can be recognized and enforced by the courts.

As said by this court in *Brown v. Root* (18 App. Cas. D. C., 239, 243):

There seems to be no substantial right of person or property in controversy under the allegations of his petition and his prayer for judgment. He has neither been restrained of his liberty nor deprived of any right of property over which the court has jurisdiction.

See also *U. S. ex rel. Edwards v. Root*, 22 App. Cas. D. C., 419, 431.

4. THE NAVY YARD ORDERS GIVE RISE TO NO LEGAL RIGHT ON THE PART OF APPLICANTS FOR REGISTRATION ENFORCEABLE BY THE COURTS.

On July 29, 1896, these orders were adopted as the regulations of the Civil Service Commission by that body, and by Executive order of November 2, 1896, it was directed that no modification of the regulations

should be made without the approval of the Civil Service Commission. (Fifteenth Annual Report, Civil Service Commission, p. 69.)

These regulations, whether formulated by the President of the United States, or by the Secretary of the Navy, or by the Civil Service Commission, are undoubtedly binding upon the subordinate officials of the Navy Department and will justify any action taken by them in pursuance thereof, provided such regulations are themselves authorized by law; but they do not confer any legal right to redress upon persons injured or prejudiced by the failure of such subordinate officials to obey them.

Such was the holding of the late Mr. Justice Cox, of the Supreme Court of this District, in a case where a clerk removed from office in one of the Departments claimed reinstatement, on the ground that the civil-service regulations had not been followed in his removal. The court said:

I have no doubt that the President may lay down rules for the internal policy of his Administration, and may require his chief executive officers, dependent upon his pleasure for their tenure of office, to conform to them, or else to sever their official relations with him, and in that sense the rules relied upon by complainant were within his political and executive authority. But the enforcement of such rules is a matter between the President and his Cabinet and not a matter for the courts, or one in which the complainant has a legal interest. (*Woods v. Gary*, 25 Wash. Law Rep., 591, 595.)

This was the first of half a dozen cases decided in different Federal courts at about the same time, in which arose the question as to the force to be given the civil-service regulations, and in each of these cases the view of Justice Cox was adopted.

In *Carr v. Gordon* (82 Fed., 373, 379) it was said by Jenkins, circuit judge:

He (the President) may direct his subordinates, who exercise under him in certain cases the power of appointment and removal, with respect thereto, and may regulate the manner in which they may act for him; but this is an administrative order of the Executive, not made in compliance with any law, or in regulation of the execution of any law enacted by Congress restricting his right of removal, but is simply an instruction to those who hold positions by virtue of his appointment of the manner in which they shall discharge their duties in respect to the removal of their subordinates. The order is not the law of the land. It is not the emanation of the lawmaking power, but is merely a regulation adopted by the Executive, as he rightfully might, in regulation of the conduct of those who are subject to his authority. He made it, and may at his pleasure rescind it. The law of the land is not subject to repeal by the Executive. The regulation and orders of the Executive or heads of Departments under authority granted by Congress—such as the order under consideration here—are regulations prescribed by law in the sense that acts done under them are upheld, and in that light

they may have the force of law. But the failure to do the act thereby enjoined, or the doing of the act thereby prohibited, does not render one liable to the law. (*United States v. Eaton*, 144 U. S., 677.) * * * He who disobeys such order of the President is responsible to and must be dealt with by him.

To the same effect are:

Taylor v. Kercheval, 82 Fed., 497, 504;
Fleming v. Stahl, 83 Fed., 940, 943;
Morgan v. Nunn, 84 Fed., 551, 553; and
Page v. Moffett, 85 Fed., 38, 39, 40.

The attention of the court is called to the fact that the civil-service rules promulgated by the President March 20, 1903, and which became effective April 15, 1903 (see Twentieth Report of Civil Service Commission), provide:

RULE V.—QUALIFICATIONS OF APPLICANTS.

1. No person shall be admitted to examination unless he be a citizen of *or owe allegiance* to the United States.

The words "or owe allegiance" to the United States were inserted for the purpose of affording the Porto Ricans, as well as the Filipinos, an opportunity to enter the classified service.

Accordingly, in a note to this rule, the Civil Service Commission say that "an applicant who claims United States citizenship by virtue of residence in Porto Rico and who shows birth or naturalization in Porto Rico will not be required to show further evidence of citizenship."

This rule, however, applies only to applicants for examination for the *classified* service, and has no application to the employment of laborers at the navy yards of the United States, who are not included within the classified service. Thus, Rule II, paragraph 1, of the civil-service rules above referred to, provide:

The classified service shall include all officers and employees in the executive civil service of the United States, heretofore or hereafter appointed or employed, in positions now existing or hereafter to be created, of whatever function or designation, whether compensated by a fixed salary or otherwise, *except persons employed merely as laborers* and persons whose appointments are subject to confirmation by the Senate, etc.

And on page 100 of their Twentieth Report, the Civil Service Commission, referring to the appointment of laborers in the Government service, say:

This system of appointments *is distinct from the classified service*, and does not classify the positions of mere laborers under the civil-service act and rules. A *registration system* for the employment of labor at navy-yards was devised by Secretary Tracy in 1891, which excluded personal preferences and partisan consideration in such employment.

In other words, the navy-yard regulations and the civil-service rules are entirely distinct, and this is not contradicted, but, in fact, distinctly recognized by Rule XVI of the civil-service rules promulgated by the

President March 20, 1903, which, reenacting the order of November 2, 1896, provides that "no modification of the *existing regulations* in the Navy Department governing the employment of labor at navy-yards shall be made without the approval of the Commission."

The "existing regulations," as stated by the Commission in their Twentieth Report (p. 87), provide that "no applicant is permitted to be registered unless he furnishes satisfactory evidence that he is *a citizen of the United States*, or has served in the Army, Navy, or Marine Corps," etc., thus indicating that in their opinion Rule V of the civil-service rules had no application. This case itself evidences the fact that such is also the opinion of the Navy Department.

II.

THE APPELLANT IS NOT A CITIZEN OF THE UNITED STATES.

This question is discussed at length in the special brief filed herewith.

Upon both branches of the case, it is submitted, the judgment of the court below should be affirmed.

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